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SUPREME COURT, U. S

In the Supreme Court of the United States

Octtober Term, 1973

No. 73-1009

HAYDEN, STONE INCORPORATED, a Delaware corporation, and HS EQUITIES, INC., a corporation,

Petitioners,

vs.

GUS T. PIANTES and MARY M. PIANTES, his wife,

Respondents.

HAYDEN, STONE INCORPORATED, a Delaware corporation,

Petitioner,

vs.

ALEX M. MARKANKIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

BRIEF AMICUS CURIAE

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BRIEF AMICUS CURIAE

The Attorney General of the State of Utah respectfully moves the Court for permission to file this brief as Amicus Curiae.

The Attorney General of Utah prays that a writ of

certiorari not issue to review the judgments of the Supreme Court of the State of Utah entered in the above cases on September 27, 1973.

INTEREST OF AMICUS

The State of Utah's Blue Sky laws, which are a product of the Uniform Securities Act, are being challenged by the petitioner. The State of Utah is deeply interested in preserving the system of concurrent jurisdiction among state and federal governments in the field of securities regulation.

QUESTION PRESENTED

Should the Supreme Court of the United States grant petitioner's petition for writ of certiorari to review the available civil remedies of the Utah "Blue Sky" laws?

ARGUMENT

The role of the states in providing investment regulation and protection was defined in Jennings, *The Role of the States in Corporation Regulation and Investor Protection*, 23 *Law & Cont. Prob.* 193 (1958), as follows:

> This is a large country, and it is to be expected that there will be strong differences of opinion, sectional and otherwise, with respect to corporation and securities legislation . . . One of the virtues of our federal system is that the national government may set a minimum standard of regulation and leave to the states the opportunity to take additional measures if they so desire. *Id.* at 230.

Congress has enacted various federal securities acts; however, it has not pre-empted the field of securities regu-

lation. Hays, *State "Blue Sky" and Federal Securities Laws*, 11 *V. and L. Rev.* 659, 660 (1958). All but a few states regulate in one form or another the distribution of securities. Jennings & Marsh, *Securities Regulation* 524 (2d ed. 1968).

The Court in *Retail Clerks Internat'l Ass'n, Local* 1625, *AFL-CIO* v. *Schermerhorn*, 375 U. S. 96 (1963) holds that when determining whether Congress has precluded state enforcement of select state laws adopted pursuant to its authority, that the purpose of Congress is the ultimate touchstone. Congress has specifically articulated its purpose regarding the securities field by its enactment of the Securities Act of 1933, § 18, 48 Stat. 85, 15 U. S. C. § 77(r) (1952), which expressly preserves state regulation, even though the issue is required to be registered under the Federal Act.

> Nothing in this Subchapter shall affect the jurisdiction of the securities commission of any State . . . of the United States . . . over any security or any person.

Thus, the Securities Act of 1933 expressly provides for concurrent operation with State laws rather than for federal pre-emption of the securities field. Hays, *State "Blue Sky" and Federal Securities Laws*, 11 *Vand. L. Rev.* 659, 660 (1958). A further expression of congressional intent is the fact that Congress has enacted a number of intrastate exemptions in the various federal securities acts, thus preserving the states' right to regulate. 69 *Am. Jur. 2d* 1060, *Securities Regulation — States* § 2 (1973). Cf. Securities Act of 1933, § 3(a)(11) and Securities Exchange Act of 1934, § 15(a)(1).

The Supreme Court of Virginia, when faced with a federal pre-emption question, concluded that the states are free to exercise such regulatory control over the sale of securities if it does not conflict with or violate any provision of the Federal Constitution. In absence of such conflict, it is contemplated that the states and the federal government shall exercise concurrent jurisdiction in the securities field. See *Traveler's Health Ass'n* v. *Commonwealth*, 188 Va. 877, 51 S. E. 2d 263, *aff'd* 339 U. S. 643 (1949). In a similar fashion, the Court, in *Marketlines, Inc.* v. *Chamberlain*, 63 Ill. App. 2d 274, 211 N. E. 2d 399 (1965), concluded that state securities laws

> . . . are a proper use of police power to insure that only competent individuals of integrity act in the securities field for the welfare of the people of the state, and although plaintiff may be engaged in interstate commerce, the incidental inconvenience which may be caused plaintiff must yield to the public welfare. The federal government has not preempted this area of activity, and plaintiff should not be permitted to act as an investment advisor in the State . . . until it complies with the . . . Act. *Id.* at 403.

Cary, *Corporations* (4th ed. 1969), concludes that state blue sky laws appear to be a necessary part of the securities regulation scheme.

> [T]he SEC has itself recognized explicitly, disclosure is often not enough, for naive investors seldom examine the available facts and commonly are not sophisticated enough to make proper use of them if they do. *Id.* at 1477.

In an effort to protect the investing public and more adequately regulate the securities industry, the 1963 Utah State Legislature enacted the model Uniform Securities Act, as provided in Utah Code Ann. § 61-1-1, et seq. (1953). The flavor of federal law running throughout the Uniform Act looks toward better coordination between state and federal securities laws. *Blue Sky Laws — Uniform Securities Act*, 3 *B. C. Ind. & Comm. L. Rev.*, 455, 465 (1962). The drafters of the Uniform Act, Loss and Cowett, *Blue Sky Law* (1958), comment on the act as follows:

> At any rate, our dual system of federal-state regulation in the securities field is too firmly fixed to make federal preemption even remotely practicable. The only hope for simplification lies in uniformity and federal-state coordination. *Id.* at 237-38.

We admit that the Uniform Securities Act § 410 (Utah Code Ann. § 61-1-22 (1953)), which creates civil liability for violations of the Act, represents a form of strict liability which is justified by the fact that the civil remedies are intended to complement enforcement of the criminal provisions. Accordingly, the Act carefully defines the instances in which a purchaser of securities may hold the seller or certain other parties liable in a civil action. See the *Uniform Securities Act*, 12 *Stan. L. Rev.* 105, 177-78 (1960).

It is the conclusion of this brief that federal and state governments enjoy concurrent jurisdiction in the area of securities regulation. The federal government has not preempted this field. States are free to exercise regulatory con-

trol over the sale of securities if they do not conflict with or violate federal statutory or constitutional provisions.

CONCLUSION

The Attorney General of the State of Utah urges the Court to deny petitioner's writ of certiorari in this proceeding.

Respectfully submitted,

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